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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,596	07/06/2001	Vincent Pavis	1112-102.US	4105

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EXAMINER

NGUYEN, HELEN

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 04/01/2002

4

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/900,596

Applicant(s)

PAVIS ET AL.

Examiner

Helen Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 4,13,15 and 25-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12, 14, and 16-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The claimed priority of this application to US Provisional Application No. 60/217,472 filed on July 11, 2000, is acknowledged.

Applicant's election of Group I, claims 1-26, and species: oleic acid, and urea in Paper No. 3, filed February 11, 2002 is acknowledged.

Because applicant did not distinctly and specifically point out any errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 4, 13, 15, and 25-30 are non-elected.

Claims 1-3, 5-12, 14, and 16-24 are presented for examination.

The undersigned Examiner supports the goal of the Office to advance prosecution as expediently as is reasonably possible. Co-operation is requested with respect to the timely submission of any references deemed pertinent to the present application along with Form PTO-1449.

#### ***Claim rejection- 35 USC § 112***

❖ The following is a quotation of the **second paragraph of 35 U.S.C. 112**:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, the term "assimilable" is vague. For who? Do Applicants intend bacteria?

The term "reduction" in claim 23 is a relative term which renders the claim indefinite. The term "reduction" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The scope of the claims is indefinite as to how much of a "reduction" meant in the claims.

***Claim rejection- 35 USC § 102***

❖ The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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**1/ Claims 1-3, 5-12, 14, 16-18, 20-21, and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Tellier et al. (US Patent No. 4,460,692).**

Tellier et al. teach a microemulsion (title, and abstract). Mixed oils, including mineral oil, are specified (column 3, lines 63-64). Water in oil emulsions are disclosed (column 3, line 20). Droplet sizes of 80 and 100 Angstroms are specified (column 2, lines 38-40; and claim 20). Culturing microorganisms is specified (abstract). 28% to 36.8% oleic acid, 13.8% to 19.2% water, and 13.8% to 15.7% urea are disclosed (claim 19). Ethylene glycol at 10% is specified (Table 1).

As to the claimed properties, the anticipatory composition must possess them because it is the same composition as that claimed.

**2/ Claims 1, 2, 5, 8, 11, 12, 16-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Freiesleben (US Patent No. 5,171,475).**

Freiesleben teaches water in oil microemulsions (title; abstract; column 4, line 20). Organic solvents comprising 2-(2-butoxyethoxy) ethanol are disclosed (claim 6). Compounds containing nitrogen are specified

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(Table 2). Waxes are disclosed (Table 1). 30% butyl carbitol is specified (Table 3).

As to the claimed properties, the anticipatory compositions must possess them because it is the same composition as that claimed.

### ***Conclusion***

Claims 1-3, 5-12, 14, and 16-24 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is (703) 605-1198. The examiner can normally be reached on M-F (9:00-4:30).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Edward J. Webman can be reached at (703) 308-4432 or her supervisor, Minna Moezie can be reached at (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 305-3592 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Helen Nguyen  
Patent Examiner

March 27, 2002



EDWARD J. WEEMAN  
PRIMARY EXAMINER  
GROUP 1500